

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**Building Code Appeals Board
Docket# 10-866**

Erwin Rivera,)	
Appellant)	
)	
v.)	
)	
City of Everett,)	
Appellee)	
)	

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board grant a variance from 7th edition 780 CMR 1009.3 and 1009.4 for the property at 32 Lynde Street, Everett, MA 02149. In accordance with G.L. c. 30A, §§ 10 and 11; G.L. c. 143, §100; 801 CMR 1.02 *et. seq*; and 780 CMR 122.3.4, the Board convened a public hearing on April 20, 2010 where all interested parties were provided with an opportunity to testify and present evidence to the Board. Appellant Erwin Rivera and City of Everett building inspector John Fields appeared for the hearing as noted on the sign in sheet which is on file at the Department of Public Safety.

Exhibits

1. State Building Code Appeals Board Appeal Application Form

Findings of Fact

1. The property at 32 Lynde Street, Everett, MA (“Property”) was originally a two family dwelling. It was permitted to be changed into a three family dwelling with the condition that a second adequate means of egress would be constructed.
2. The additional means of egress was a new stairway. The plans for the new stairway were submitted and approved as compliant. The first contractor who constructed the stairway built them noncompliant.
3. An order was sent by the original building inspector Jim Sheehan that cited issues with the stairway. He cited the failure of the stairs to meet the 11 inch minimum tread depth and lack of dimensional uniformity by 0.25 inches.
4. The original building inspector Jim Sheehan no longer works for the City of Everett and has been replaced with John Fields, the current building inspector.
5. It would cost the Appellant approximately \$20,000 and significant delay to make the stairway compliant.
6. The current building inspector, John Fields, traversed the stairways several times and felt that they were safe and adequate.

Discussion

The Appellant’s property has been converted from a two-family dwelling to a three-family dwelling based on the condition that two means of egress are provided. The original building inspector stated that the stairways that had been constructed to meet this condition fell

short of specifications required by 780 CMR 1009.3 and 1009.3.1 (“Code”). The Appellant sought relief from the requirements of these Code sections.

The original Building Inspector who brought the complaint no longer works for the City of Everett. The current Building Inspector stated that he traversed the stairs several times and believed that they were both safe and adequate.

In addition, although the original Building Inspector cited the stairways lack of dimensional uniformity based on tolerances of 0.25 inches, this is within the limits prescribed by 780 CMR 1009.3.1 which provides in pertinent part that “[t]he tolerance between the largest and smallest riser or between the largest and smallest tread shall not exceed 0.375 inch (9.5 mm) in any flight of stairs.” As such, the tolerances of the stairway already satisfy the requirements of the Code.

A motion was made to grant the Appellant’s request for a variance from the 7th Edition of 780 CMR 1009.3 with the condition that two means of egress are provided on the Property. The motion to grant the variance was based on the testimony of the Building Inspector who felt that the stairway was both safe and adequate. A variance was not required from 780 CMR 1009.3.1 because the Property already conformed to it. There was a second on the motion and a board vote was taken, which was unanimous.

Conclusion

Provided that the Property has two means of egress, the Appellant's request for a variance from 780 CMR 1009.3, as described in the Discussion is hereby **ALLOWED**.

SO ORDERED.



Douglas Semple

Alexander MacLeod

Dana Haagensen

DATED: August 18, 2010

In accordance with M.G.L. c. 30, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days of receipt of notice of this decision.